

ASSEMBLY BILL

No. 1919

Introduced by Assembly Member Aghazarian

January 31, 2006

An act to amend Section 585 of the Code of Civil Procedure, and to amend Section 68608 of the Government Code, relating to civil actions.

LEGISLATIVE COUNSEL’S DIGEST

AB 1919, as introduced, Aghazarian. Civil actions: simple collection actions.

(1) Existing law requires the court to enter default and judgment against the defendant in an action arising upon contract or judgment for the recovery of money or damages if the defendant fails to answer the complaint, as specified.

This bill would require the clerk of the court to enter default and judgment against the defendant in a simple collection action upon the filing of a verified complaint by the plaintiff indicating all amounts due by the defendant.

(2) Existing law, the Trial Court Delay Reduction Act, requires each superior court to establish a delay reduction program for limited civil cases, with specified exceptions.

This bill would prohibit the assignment of limited jurisdiction matters constituting simple collection actions to a delay reduction program. The bill would require the court to assign a trial date, as specified, and would prohibit the scheduling of case management or other status conferences, and hearings relating to service of process, unless specifically requested by a party. The bill would require the Judicial Council to define “simple collection actions” by rule of court.

(3) The bill would make other technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 585 of the Code of Civil Procedure is
2 amended to read:
3 585. Judgment may be had, if the defendant fails to answer
4 the complaint, as follows:
5 (a) In an action arising upon contract or judgment for the
6 recovery of money or damages only, if the defendant has, or if
7 more than one defendant, if any of the defendants have, been
8 served, other than by publication, and no answer, demurrer,
9 notice of motion to strike ~~(of the character hereinafter specified)~~
10 *as described in subdivision (f)*, notice of motion to transfer
11 pursuant to Section 396b, notice of motion to dismiss pursuant to
12 Article 2 (commencing with Section 583.210) of Chapter 1.5 ~~of~~
13 ~~Title 8~~, notice of motion to quash service of summons or to stay
14 or dismiss the action pursuant to Section 418.10, or notice of the
15 filing of a petition for writ of mandate as provided in Section
16 418.10, has been filed with the clerk or judge of the court within
17 the time specified in the summons, or ~~such~~ *any* further time as
18 may be allowed, the clerk, or the judge if there is no clerk, upon
19 written application of the plaintiff, and proof of the service of
20 summons, shall enter the default of the defendant or defendants;
21 so served, and immediately thereafter enter judgment for the
22 principal amount demanded in the complaint, in the statement
23 required by Section 425.11, or in the statement provided for in
24 Section 425.115, or a lesser amount if credit has been
25 acknowledged, together with interest allowed by law or in
26 accordance with the terms of the contract, and the costs against
27 the defendant; or defendants, or against one or more of the
28 defendants. *For simple collection actions subject to subdivision*
29 *(b) of Section 68608 of the Government Code, the clerk shall*
30 *enter the default and judgment upon the filing of a verified*
31 *complaint by the plaintiff indicating all amounts due by the*
32 *defendant. If, by rule of court, a schedule of attorneys' attorney's*
33 ~~fees to be allowed~~ *has been adopted, the clerk may include in the*

1 judgment-attorneys' attorney's fees in accordance with ~~such the~~
2 schedule ~~(1)~~ if ~~(1)~~ the contract provides that attorneys' attorney's
3 fees shall be allowed in the event of an action thereon, or ~~(2)~~ if
4 the action is one in which the plaintiff is entitled by statute to
5 recover attorneys' attorney's fees in addition to money or
6 damages. The plaintiff shall file a written request at the time of
7 application for entry of the default of the defendant or
8 defendants, to have attorneys' attorney's fees fixed by the court,
9 whereupon, after the entry of the default, the court shall hear the
10 application for determination of the attorneys' attorney's fees
11 and shall render judgment for ~~such those~~ fees and for the other
12 relief demanded in the complaint, in the statement required by
13 Section 425.11, or in the statement provided for in Section
14 425.115, or a lesser amount if credit has been acknowledged, and
15 the costs against the defendant; or defendants, or against one or
16 more of the defendants.

17 (b) In other actions, if the defendant has been served, other
18 than by publication, and no answer, demurrer, notice of motion to
19 strike ~~(of the character hereinafter specified)~~ *as described in*
20 *subdivision (f)*, notice of motion to transfer pursuant to Section
21 396b, notice of motion to dismiss pursuant to Article 2
22 (commencing with Section 583.210) of Chapter 1.5 of Title 8,
23 notice of motion to quash service of summons or to stay or
24 dismiss the action pursuant to Section 418.10 or notice of the
25 filing of a petition for writ of mandate as provided in Section
26 418.10, has been filed with the clerk or judge of the court within
27 the time specified in the summons, or ~~such any~~ further time as
28 may be allowed, the clerk, or the judge if there is no clerk, upon
29 written application of the plaintiff, shall enter the default of the
30 defendant. The plaintiff thereafter may apply to the court for the
31 relief demanded in the complaint; ~~the~~. The court shall hear the
32 evidence offered by the plaintiff, and shall render judgment in his
33 or her favor for ~~such that~~ sum ~~(not, not exceeding the amount~~
34 ~~stated in the complaint, in the statement required by Section~~
35 ~~425.11, or in the statement provided for by Section 425.115)~~
36 ~~425.115~~, as appears by ~~such the~~ evidence to be just. If the taking
37 of an account; or the proof of any fact; is necessary to enable the
38 court to give judgment or to carry the judgment into effect, the
39 court may take the account or hear the proof, or may, in its
40 discretion, order a reference for that purpose. If the action is for

1 the recovery of damages, in whole or in part, the court may order
2 the damages to be assessed by a jury; or if, to determine the
3 amount of damages, the examination of a long account is
4 involved by a reference as above provided.

5 (c) In all actions ~~where~~ *in which* the service of the summons
6 was by publication, upon the expiration of the time for
7 answering, and upon proof of the publication and that no answer,
8 demurrer, notice of motion to strike ~~(of the character hereinafter~~
9 ~~specified)~~ *as described in subdivision (f)*, notice of motion to
10 transfer pursuant to Section 396b, notice of motion to dismiss
11 pursuant to Article 2 (commencing with Section 583.210) of
12 Chapter 1.5 ~~of Title 8~~, notice of motion to quash service of
13 summons or to stay or dismiss the action pursuant to Section
14 418.10, or notice of the filing of a petition for writ of mandate as
15 provided in Section 418.10, has been filed, the clerk, or the judge
16 if there is no clerk, upon written application of the plaintiff, shall
17 enter the default of the defendant. The plaintiff thereafter may
18 apply to the court for the relief demanded in the complaint; ~~and~~
19 ~~the~~. *The* court shall hear the evidence offered by the plaintiff, and
20 shall render judgment in his or her favor for ~~such that~~ sum ~~(not,~~
21 ~~not~~ exceeding the amount stated in the complaint, in the
22 statement required by Section 425.11, or in the statement
23 provided for in Section ~~425.115~~ *425.115*, as appears by ~~such the~~
24 evidence to be just. If the defendant is not a resident of the state,
25 the court shall require the plaintiff, or his or her agent, to be
26 examined; on oath, ~~respecting~~ *regarding* any payments that have
27 been made to the plaintiff, or to anyone for his or her use, on
28 account of any demand mentioned in the complaint, in the
29 statement required by Section 425.11, or in the statement
30 provided for in Section 425.115, and may render judgment for
31 the amount ~~which that~~ he or she is entitled to recover. In all cases
32 affecting the title to or possession of real property, ~~where in~~
33 *which* the service of the summons was by publication and the
34 defendant has failed to answer, no judgment shall be rendered
35 upon proof of mere occupancy, unless ~~such the~~ occupancy ~~shall~~
36 ~~have~~ continued for the time and ~~shall have been~~ *was* of the
37 character necessary to confer title by prescription. In all cases
38 ~~where in which~~ the plaintiff bases his or her claim upon a paper
39 title, the court shall require evidence establishing plaintiff's
40 equitable right to judgment before rendering judgment. In actions

1 involving only the possession of real property ~~where in which~~ the
2 complaint is verified and shows by proper allegations that no
3 party to the action claims title to the real property involved,
4 either by prescription, accession, transfer, will, or succession, but
5 only the possession thereof, the court may render judgment upon
6 proof of occupancy by plaintiff and ouster by defendant.

7 (d) In the cases referred to in subdivisions (b) and (c), or upon
8 an application to have ~~attorneys'~~ *attorney's* fees fixed by the
9 court pursuant to subdivision (a), the court in its discretion may
10 permit the use of affidavits, in lieu of personal testimony, as to
11 all or any part of the evidence or proof required or permitted to
12 be offered, received, or heard in ~~such~~ *those* cases. The facts
13 stated in ~~such affidavit or the~~ affidavits shall be within the
14 personal knowledge of the affiant and shall be set forth with
15 particularity, and each affidavit shall show affirmatively that the
16 affiant, if sworn as a witness, can testify competently thereto.

17 (e) If a defendant files a cross-complaint against another
18 defendant or the plaintiff, a default may be entered against that
19 party on that cross-complaint if the plaintiff or ~~that~~
20 cross-defendant has been served with ~~that the~~ cross-complaint
21 and he or she has failed to file an answer, demurrer, notice of
22 motion to strike ~~of the character specified as described~~ in
23 subdivision (f), notice of motion to transfer pursuant to Section
24 396b, notice of motion to dismiss pursuant to Article 2
25 (commencing with Section 583.210) of Chapter 1.5 ~~of Title 8,~~
26 notice of motion to quash service of summons or to stay or
27 dismiss the action pursuant to Section 418.10, or notice of the
28 filing of a petition for a writ of mandate as provided in Section
29 418.10, within the time specified in the summons, or ~~such any~~
30 other time as may be allowed. However, no judgment may
31 separately be entered on ~~that the~~ cross-complaint unless a
32 separate judgment may, in fact, be properly awarded on ~~that the~~
33 cross-complaint, and the court finds that a separate judgment on
34 ~~that the~~ cross-complaint would not substantially delay the final
35 disposition of the action between the parties.

36 (f) A notice of motion to strike within the meaning of this
37 section is a notice of motion to strike the whole or any part of a
38 pleading filed within the time ~~which that~~ the moving party is
39 required otherwise to plead to ~~such that~~ pleading. The notice of
40 motion to strike shall specify a hearing date set in accordance

1 with Section 1005. The filing of a notice of motion does not
2 extend the time within which to demur.

3 SEC. 2. Section 68608 of the Government Code is amended
4 to read:

5 68608. (a) (1) Juvenile, probate, and domestic relations
6 cases shall not be assigned to a delay reduction program, and
7 cases ~~which~~ *that* have been assigned to a judge or judges for all
8 purposes based on subject matter need not be assigned to the
9 program.

10 (2) *Limited jurisdiction matters constituting simple collection*
11 *actions, as shall be defined by the Judicial Council by rule of*
12 *court, shall not be assigned to a delay reduction program. The*
13 *court shall assign a trial date upon filing of these actions not less*
14 *than nine months nor greater than 12 months after the filing*
15 *date. Thereafter, the court shall not schedule case management*
16 *or other status conferences, nor hearings relating to service of*
17 *process, unless specifically requested by a party.*

18 (b) Judges shall have all the powers to impose sanctions
19 authorized by law, including the power to dismiss actions or
20 strike pleadings, if it appears that less severe sanctions would not
21 be effective after taking into account the effect of previous
22 sanctions or previous lack of compliance in the case. Judges are
23 encouraged to impose sanctions to achieve the purposes of this
24 article.

25 (c) This section shall become operative July 1, 1992.